

APPLICANT:
William F. Wehland

REQUEST: A variance pursuant to
Section 267-36B to allow an addition to
an attached garage within the required side
yard setback

HEARING DATE: October 13, 2004

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5445

ZONING HEARING EXAMINER'S DECISION

APPLICANT: William F. Wehland

LOCATION: 415 Cedar Springs Road, Cedar Springs Section II, Bel Air
Tax Map: 56 / Grid: 3C / Parcel: 0425 / Lot: 46
Third Election District

ZONING: R1/ Urban Residential

REQUEST: A variance pursuant to Section 267-36B, Table IV, of the Harford County Code, to allow an addition to an attached garage within the required 15 foot side yard setback, total of 35 foot side yard setback (8 foot side, total of 30 feet proposed), in the R1 District

TESTIMONY AND EVIDENCE OF RECORD:

William Wehland, Applicant, described his property as being an approximately one-half acre lot, improved by a 50 foot by 26 foot rancher, containing three bedrooms and two bathrooms. Mr. Wehland and his wife reside on the property. Attached to the home is a carport; a wooden deck is located to the rear of the home. The Applicants have resided on the property for 17 years.

Mr. Wehland wishes to construct an attached two-car garage in the location of the existing one-car carport. The garage would have 2 front garage doors and a rear entry door. The windows of the garage would match those of the existing home. The shingles and roof-line would match the shingles and roof-line of the home.

The Wehland property is subject to a 15 foot side yard setback. The 2 car garage, if allowed to be built, would come to within 8 feet of the side property line. This would necessitate a variance of 7 feet.

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The Applicant testified that other homes in his subdivision also have attached garages, and some have rear garages. Some did not have 2-car garages.

The Applicant introduced, as Exhibit 1, photographs of two other properties having two-car garages. The properties identified in Exhibit No. 1 were close to Mr. Wehland's property. Mr. Wehland believed that both of those properties needed variances in order to construct the garages.

Mr. Wehland introduced further photographs, marked as Exhibits 2 and 3, which showed various views of his home. Mr. Wehland offered these photographs to support his comments that the garage cannot practically be built anywhere else on his property except as proposed. Mr. Wehland then read and offered to the record, accepted as Applicant's Exhibit No. 5, a 3 page statement of his position. According to Mr. Wehland, his property slopes to the rear. His lot would, accordingly, require extensive grading to the rear of the property. This need to grade would make it impractical to construct a garage in that area. Also, construction to the rear of his property would create water run-off problems, which would tend to cause water drainage into his basement. Mr. Wehland stated that there are no covenants in the community which would prohibit the garage, and the variance as proposed would not be detrimental to the neighborhood.

No neighbors registered any objection to Mr. Wehland. He does not believe that a 15 foot side yard setback is necessary.

In addition to being precluded from placing the garage to the rear of his house because of his lot's topography, Mr. Wehland feels he cannot put a garage to the opposite side, or right side of his house, as he does not have sufficient available side yard. Mr. Wehland testified that the available side yard on the carport side is 20 feet (from the edge of the carport to the lot line); the available side yard on the opposite side of the house is 22 feet.

Mr. Wehland's written statement to the Hearing Examiner, Applicant's Exhibit No. 6, addressed in more detail his application, and was an attempt to refute the report and recommendations of the Harford County Department of Planning and Zoning.

Mr. Wehland offered in his written statement, that the existing topography prevents the attached garage from being constructed to the rear of the property, as several other neighbors have done. Mr. Wehland feels and has been told that the slope of his property to the rear does not lend itself to constructing a two-car garage. Furthermore, water leakage in the basement would result from the garage being built to the rear of his house, and water would run into an area where the sewage tank and drainfields exist. An attached garage to the existing carport would not present such a problem. Mr. Wehland further stated that he takes pride in the overall appearance of his property and that the addition would enhance the looks of his property.

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Mr. Wehland's neighbors have all expressed their support for the variance and question why a variance should be required. Mr. Wehland further feels the Code requirements for setbacks are antiquated, given the fact that new single-family homes in the nearby area are being built with a side setback of less than 10 feet.

Mr. Wehland feels that even if he were forced to build a two-car detached garage to the rear of his property, it would be constructed of vinyl and would not match the existing dwelling. As a result, it would be detrimental to his neighbor's property.

Enclosing the existing carport to create a one-car garage would result in not being able to open the passenger side door, which would create a hardship. Building another carport with a metal roof next to the existing carport would meet the "rules" but would be detrimental to adjacent properties and would be an eyesore to the public.

Enclosing the existing carport to create a one-car garage and adding an unattached storage shed several feet from the structure to the rear would meet Code but would be considered detrimental to adjacent properties as viewed from the road.

The Applicant submitted a letter dated July 14, 2004, from Churchville Construction Co., Inc. That letter indicates, after an inspection of the Applicant's property, that the author of that letter found that "the slope of the property in the rear does not lend itself to constructing a garage there. Furthermore, the run-off water from a new garage in the rear would have to exist through the existing carport, creating a possible water leakage into the basement during heavy rains or melting snows."

The letter further stated, "because of the topographical conditions of your property, the practical solution is to extend your garage by approximately twelve feet and fully enclose your carport. This would also eliminate any water leakage into your basement within the carport you have experienced during heavy rains and snow".

Next for the Department of Planning and Zoning testified Anthony McClune. Mr. McClune, and the Department, are of the opinion that the subject property is not unique. The topography is similar to many other lots in the vicinity. Its configuration is uniform and typical for the area.

Mr. McClune stated that a garage can be built to the rear of the property, which would be similar to many other garages in the neighborhood. Alternatively, a one-car attached garage could be constructed.

Mr. McClune stated that the Applicant's home is well maintained, as are other homes in the subdivision. Houses were all built uniformly and most have one-car carports. Two homes in the neighborhood have attached garages, but maintain applicable setbacks. Mr. McClune knows of no variances that have been granted for any garage in the subdivision.

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The Department is particularly concerned about setting a precedent. No other homes have requested variances, and Mr. McClune feels it would not be appropriate to grant this request.

During cross-examination, Mr. Wehland then asked Mr. McClune why it is practical to build a garage to the rear of his home. Mr. McClune responded that other homes in the neighborhood which have the same topography have built detached garages to the rear of their homes and he sees no reason why the Applicant could not do the same.

Mr. Wehland then testified that there exists a telephone pole to the right side of his house which would accordingly make it impractical to put a driveway in that area to access the garage to the rear of the home.

No testimony or evidence was presented in opposition.

APPLICABLE LAW

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

- A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
 - (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
 - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*

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- C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval."*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Unfortunately, one cannot be awarded a variance on the basis of practical difficulty if the only practical difficulty articulated is that one cannot do what one wishes to do without the variance. (See Chester Haven Beach Partnership v. Board of Appeals, 103 Md. App. 324 (2001). If that were the case, every variance would, by definition, require approval.

While sometimes the practical burden upon an Applicant in setback variance situations is slight, it is nevertheless real. Accordingly, to make his preliminary showing, the Applicant must show something unique about his property or its topographical condition which causes him practical difficulty.

Despite his best efforts, the Applicant is unable to show any unique feature of his property. A one-car, attached carport is common for the area, and would be in keeping with other homes. A larger one-car garage can easily be constructed in place of the existing carport without a variance. Alternatively, the Applicant could construct a detached garage to the rear of his property. Such a structure, while perhaps not common throughout Harford County is, in fact, very common within the Applicant's subdivision.

A review of Attachment 9 to the Staff Report, which is an aerial photograph, shows a number of detached garages located on the same street as the Applicant's property, and generally throughout his neighborhood. It would appear, from review of Attachment 9, that a common type of garage in the neighborhood is a detached garage, constructed to the rear of the residences. This observation is consistent with the recommendations of the Harford County Department of Planning and Zoning and the testimony of Mr. McClune.

To counter this obvious neighborhood characteristic, the Applicant suggests that his rear lot topography is such that it would practically prohibit him from constructing such a garage in that location. However, the evidence in the record does not support such an argument and, indeed, suggests otherwise. A review of Applicant's Exhibit 3, which are views of the rear lawn of the subject property, in fact demonstrates that the lot is relatively flat. Not only does there appear to be no significant grade change, there is virtually no grade change. This finding is supported by the testimony of Mr. McClune, the Staff Report, and the photographs marked as Attachment 10 to the Staff Report.

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The Hearing Examiner is aware, in making this finding, of the letter from Churchville Construction Co., Inc. which suggests a contradictory finding. However, no representative of Churchville Construction Co., Inc. appeared to testify. As a result, the testimony of Mr. McClune, and evidence provided by the photographs in the file, is found to be most convincing and persuasive.

In the final analysis, the Applicant's best argument is that others in the neighborhood have attached two-car garages and so, accordingly, should he. However, the only evidence presented by the Applicant of attached two-car garages were photos of two other structures in the vicinity, neither of which, by testimony of Mr. McClune, required variances. Accordingly, the Applicant's argument in this regard must also fail.

A review of the Applicant's sketch plan attached to his application shows that the Applicant's side wall is approximately 32 feet from the side lot line. The existing carport is located within this 32 feet. Having to maintain a 15 foot wide side yard setback reduces the Applicant's available space from his side wall to 17 feet. Accordingly, the Applicant has 17 feet within which to build an enclosed garage and still maintain the required 15 foot side yard setback. To require the Applicant to maintain such a setback when he has a sufficient area in which to build a garage, though perhaps not wide enough for two cars, is not imposing a hardship upon the Applicant, particularly when no other setbacks have apparently been violated within the neighborhood, where rear garages are common throughout his subdivision, and there is no other compelling reason why the Applicant could not build the requested garage at some other location on his property.

“ ‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area . . . ” (North v. St. Mary's County, 99 Md. App. 502 (1994)). The Applicant is unable to show that his property is any different from any other property in the area.

CONCLUSION:

For the above reasons, it is accordingly recommended that the requested variance be denied.

Date: November 24, 2004

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner